* **HIGH COURT OF DELHI : NEW DELHI**

\+ **W.P(C) No. 3181/2006**

Date of decision: August 24, 2007

Yogesh Kumar ..... Petitioner
Through: Mr. R.C. Lamba, Advocate

versus

Union of India & Ors. ..... Respondent
Through: Mr. Mohit Jolly, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment? No

2. To be referred to Reporter or not? No

3. Whether the judgment should be reported in the Digest? No

VIPIN SANGHI, J.(ORAL)

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1. The Petitioner assails the order dated 2nd February, 2006 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in OA No. 1045/2005 whereby, the petitioner's aforesaid OA was dismissed by the Tribunal. Before the Tribunal, the Petitioner had assailed the order passed by the Additional Commissioner of Income Tax, Ghaziabad, UP dated 11.7.2000

whereby, he had been disengaged w.e.f. 6.6.2000 along with 5 others.

2. The applicant was engaged as a daily wager on 21.10.1994. He states that he had completed 206 days on duty as on 29.9.1995.

3. It appears that on 6.6.2000, the petitioner was involved in an incident which resulted in registration of a case under Section 34 of the Police Act against the petitioner. Ultimately, the petitioner was acquitted by the learned Chief Judicial Magistrate, Ghaziabad on 27.7.2000. Consequent upon his acquittal, the petitioner filed the aforesaid OA seeking reinstatement with all consequential benefits. The contention of the petitioner was that 5 others, who had been disengaged similarly as the petitioner, had since been re-engaged on 26.6.2000. However, the petitioner was discriminated by the respondents, inasmuch as, he was not reinstated along with others like him.

4. The respondents contested the petition on the ground that the petitioner did not hold any post since he was a daily wager. Respondents relied upon the decisions of the Supreme Court in ***Mahendra L. Jain vs. Indore Development Authorities*** JT 2004 (10) SC 1 and ***Union of India vs. A.P. Bajpai and Ors.*** AIR 2003 SC 923.

5. The Tribunal observed that the petitioner had been

disengaged in the year 2000, and yet he chose to file the OA in 2005 and consequently the petition suffered from delay and laches. Yet the Tribunal examined the petitioner's claim on merits and rejected the same. The Tribunal held that the petitioner was yet to get temporary status and was discharging his duties only on daily wages. Consequently, he had no right of protection under Article 311 of the Constitution of India. On the issue of dispensing with his services without prior opportunity to show-cause, the reasoning of the Tribunal is contained in Para 12 of the impugned order which reads as follows :-

> "Apex Court in Nar Singh Pal Vs. Union of India & Others (2000) 3 SCC (Page 588) in case of a casual worker, who had acquired temporary status, held that on acquirement of temporary status one is bestowed with certain benefits, which, inter alia, includes entitlement of constitutional protection envisaged by Article 311 of the Constitution, i.e., before the retrenchment a reasonable opportunity should have to be accorded. However, as the applicant was on daily wages, his dispensation of service, though may be actuated on a particular incident, showed his unsatisfactory performance. The incident is only a motive for dispensing his service, as he has no right to the post."

6. We find ourselves in complete agreement with the proposition set out by the Tribunal as aforesaid. Moreover, in view of the decision of the Hon'ble Supreme Court in ***State of Karnataka and Ors. vs. Uma Devi and Ors.*** 2006 (4) scale 197, in our view, the petitioner has no right to seek regularization or reinstatement and we consequently dismiss this petition.

VIPIN SANGHI, J.

A.K.SIKRI, J.

August 24, 2007
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